

214
ORIGINALIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAJOHN D. PERKEY and
THERESA M. PERKEY,

Plaintiffs

v.

RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN and
KENT,

Defendants

CIVIL ACTION NO. 1:CV-00-1639
Rambo
Przyser

JURY TRIAL DEMANDED

AMENDED JOINT CASE MANAGEMENT PLAN**FILED**
HARRISBURG

MAR 15 2002

1. Principal Issues

- 1.10 Separately for each party, please give a statement summarizing this case.
-
- By plaintiff(s):
-
- MARV E. D'ANDREA, CLERK
-
- Per
- [Signature]*
- DEPUTY CLERK

On or about September 15, 1998, at approximately 6:10 a.m., Plaintiff, John D. Perkey, was lawfully operating his tractor trailer on I-76 (Pennsylvania Turnpike) near milepost 37.7 traveling eastbound. The Defendant, Daniel Joseph Bemben, was also traveling east on I-76 ahead of the Plaintiff, when he was informed on his CB Radio by another truck that his left rear axle was on fire. Subsequently, before being able to pull his trailer off the highway, the left front trailer wheels broke off the axle of Defendant's tractor trailer. The wheels of Defendant's tractor trailer which had broken off continued to roll eastbound along I-76. Plaintiff, John D. Perkey, suddenly encountered the wheel on the highway on the right-hand lane of travel. Plaintiff was unable to avoid striking the wheel and the impact between the Plaintiff's tractor trailer and the wheel on the highway caused Plaintiff's right front wheel to break off causing the Plaintiff's tractor trailer to veer off the highway and crash into a hill on the side of the berm. As a result of the accident, Plaintiff, John D. Perkey, suffered severe injuries to his neck, back, left knee and right shoulder. These injuries are permanent and have resulted in Mr. Perkey being unable to work since the accident. The Defendants are liable to the Plaintiff for their action in negligently operating and maintaining an unsafe vehicle which resulted in and caused the accident which injured the Plaintiff.

By defendant(s):

On or about September 15, 1998, Defendant, Reliable Carriers, Inc., owned a trailer which was being hauled by Defendant Daniel Joseph Bemben, who was under dispatch and traveling in

Allegheny County, Pennsylvania, on the Pennsylvania Turnpike. Through no negligence of the Defendants, the trailer wheels broke off the axle and continued to roll eastbound down the turnpike beyond the area where the Defendant pulled his vehicle to the berm of the road. It is believed and therefore averred that Plaintiff then struck the wheels that had broken off the axle.

The principal *factual* issues that the parties *dispute* are:

- 1.11 Actions of Defendant.
- 1.12 The manner and cause in which the wheels broke off the axle.
- 1.13 The nature and extent of the injuries.
- 1.14 The cause of the Plaintiff's injuries.
- 1.15 The manner in which Plaintiff struck the wheels and cause of Plaintiff's striking the wheels.
- 1.16 The nature and extent of Plaintiff's income loss.
- 1.17 The parties reserve the right to raise other factual issues in dispute as discovery continues.

agree upon are:

- 1.21 The date of the accident.
- 1.22 The location of the accident.
- 1.23 The parties involved.
- 1.24 Agency

1.30 The principal *legal* issues that the parties *dispute* are:

- 1.31 Causation of the accident and Plaintiff's injuries.
- 1.32 Negligence of Defendant.
- 1.33 Contributing negligence of Plaintiff.
- 1.34 Comparative negligence of the Plaintiff.
- 1.35 Impairment of earning capacity of Plaintiff.
- 1.36 Theresa M. Perkey's claim for loss of consortium.
- 1.37 Damages of Plaintiff.
- 1.38 The parties reserve the right to raise other legal issues in dispute as discovery continues.

1.40 The principal legal issues that the parties agree upon:
None.

1.50 Identify any unresolved issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue:
Plaintiff has attempted service over Kent. To date, service has not been effectuated.

1.60 Identify any named parties that have not yet been served:
Kent.

- 1.70 Identify any additional parties that Plaintiff intends to join:
None.

Defendant(s) intend to join:

Defendants intend to join the manufacturer of the trailer if and when it is determined that the manufacturer is someone other than Defendant Kent. Defendants reserve the right to join additional parties as developed through discovery.

- 1.80 Identify any additional claims that Plaintiff(s) intends to add:
None at this time.

Defendant(s) intends to add:
None other than the above.

2.0 Alternative Dispute Resolution ("ADR")

- 2.10 Identify any ADR procedure to which this case already has been assigned or which the parties have agreed to use.
None.

- 2.20 If the parties have been unable to agree on an ADR procedure, but one or more parties believes that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended:
Not applicable.

- 2.30 If all parties share the view that no ADR procedure should be used in this case, set forth the basis for that view:
Not applicable.

3.0 Consent to Jurisdiction by a Magistrate Judge

Indicate whether all parties agree, pursuant to 28 U.S.C. §636(c)(1), to have a magistrate judge preside as the judge of the case with appeal lying to the United States Court of Appeals for the Third Circuit:

All parties agree to jurisdiction by a magistrate judge of this court: ☒ yes ☐ no

If all parties agree to proceed before a magistrate judgment, please indicate below which location is desired for the proceeding:

☐ Scranton
☐ Wilkes-Barre
☒ Harrisburg

4.0 Disclosures

4.101 Disclosed by Plaintiffs:

	<u>Name</u>	<u>Title/Position</u>
4.102	Trooper Eric Valentine	PA State Trooper
4.103	Dr. John Rychak	Orthopedic Surgeon
4.104	Yet to be determined	Accident Reconstructionist
4.105	Yet to be determined	Vocational Expert/Economist

4.151 Disclosed by Defendants:

	<u>Name</u>	<u>Title/Position</u>
4.152	Trooper Eric Valentine	PA State Trooper
4.153	Roc A. Nelson	Owner/Operator
4.154	Fred Purol	Manager/Reliable
4.155	Yet to be determined	Orthopedic Surgeon
4.156	Yet to be determined	Accident Reconstructionist
4.157	Yet to be determined	Vocational Expert/Economist
4.158	Yet to be determined	Engineer

Witnesses may include some or all of those disclosed by Plaintiffs, some of whom may be called as of cross-examination. Defendants reserve the right to supplement this answer.

4.200 Separately for each party, describe by *categories* the documents that have been disclosed or produced through formal discovery, indicating which categories relate (even if not exclusively) to damages:

4.201 Categories of documents disclosed by Plaintiffs:
None at this time.

4.251 Categories of documents disclosed by Defendant:
None at this time.

4.300 *Additional Documents Disclosures*: Separately for each party, describe each additional category of documents that will be disclosed without imposing on other counsel the burden of serving a formal request for production of documents.

4.301 Medical records / bills.
4.302 Medical report - Dr. Rychak.
4.303 Police report.
4.304 First Party Benefit File.
4.305 Additional categories of documents Plaintiffs will disclose.
4.306 Tax Records.
4.307 Employment Records.

4.351 Additional categories of documents Defendants will disclose:

4.352 Discoverable portions of claim file.
4.353 Witness statements.

- 4.354 Expert reports.
- 4.355 Medical records.
- 4.356 Defendant's personnel file.
- 4.357 Insurance policy.
- 4.358 Photographs.

- 4.400 Separately for each party who claims an entitlement to damages or an offset, set forth the computation of the damages or of the offset:
- 4.401 Plaintiff's calculation of damages: Lost wage claim and medical bills.
 - 4.402 Defendant's calculation of offset: Any first party medical and/or wage benefits paid. Defendant is entitled to a set off as provided by the Michigan Property & Casualty Guaranty Act.
 - 4.403 N/A.

5.0 Motions

Identify any motion(s) whose early resolution would *likely* have a significant effect either on the scope of discovery or other aspects of the litigation.
Motion for Summary Judgment on some or all of the issues.
Motion in Limine.

6.0 Discovery

- 6.100 Briefly describe any discovery that has been completed or is in progress:

By Plaintiff(s): None.

By Defendant(s): Written discovery previously sent to Plaintiffs has been answered.

- 6.200 Describe any *discovery* that all *parties agree* should be conducted, indicating for each discovery undertaking its purpose or what kinds of information will be developed through it (e.g., "plaintiff will depose Mr. Jones, defendant's controller, to learn what defendant's revenue recognition policies were and how they were applied to the kinds of contracts in this case"):

Depositions of: Parties, witnesses, police officer, and health care providers listed now or in the course of further discovery will be taken regarding the nature of the accident and injuries/damages.

- 6.300 Describe any *discovery* that one or more parties want(s) to conduct but *to which another party objects*, indicating for each such discovery undertaking its purpose or what kinds of information would be developed through it:
None.

6.400 Identify any *subject area limitations on discovery* that one or more parties would like imposed, at the first stage of or throughout the litigation:
None.

6.500 For each of the following discovery tools, *recommend the per-party or per-side limitation* (specify a number) that should be fixed, subject to later modification by stipulation or court order on an appropriate showing (where the parties cannot agree, set forth separately the limits recommended by Plaintiff(s) and by Defendant(s)):

6.501 depositions (excluding experts) to be taken by:
plaintiff(s): 5-10 defendant(s): 5-10

6.502 interrogatories to be served by:
plaintiff(s): 40 defendant(s): 40

6.503 document production requests to served by:
plaintiff(s): 30 defendant(s): 30

6.504 requests for admission to be served by:
plaintiff(s): 25 defendant(s): 25

6.600 All discovery commenced in time to be completed by:
September 30, 2002

6.700 Reports from retained experts due:
October 31, 2002 Plaintiff
November 30, 2002 Defendant

6.800 Supplementations due:
December 15, 2002

7.0 Protective Order
N/A.

8.0 Certification of Settlement Authority (All Parties Shall Complete the Certification)

I hereby certify that the following individual(s) have settlement authority.

Defendants
Dan Donovan
Associated Claim & Investigative Service, Inc.
17344 W 12 Mile Road
South Field, MI 48076

Plaintiffs
John D. Perkey
Theresa M. Perkey
328 Pine Grove Road
Gardners, PA 17324

9.0 Scheduling

- 9.1 This case may be appropriate for trial in approximately:
270 days from the lifting of the stay in this matter
- 9.2 Suggested Date for Trial:
January, 2003
- 9.3 Suggested Date for the final Pretrial Conference:
November 2002
- 9.4 Final date for joining additional parties:
July 2002
- 9.5 Final date for amending pleadings:
Plaintiff(s) June 30, 2002
Defendant(s) June 30, 2002
- 9.6 All potentially dispositive motions should be filed by:
November 30, 2002

10.0 Other Matters

Make any other suggestions for the case development process, settlement, or trial that may be useful or necessary to the efficient and just resolution of the dispute.

As indicated in Paragraph 4.402 above, the Defendant may be entitled to a set off as provided by the Michigan Property and Casualty Guarantee Act. During the period of the stay as requested by Defendants pursuant to the request of the Michigan Property and Casualty Association, Plaintiff has been working with the underinsured carrier, Prudential Insurance Company, to determine their position on availability of coverage for Plaintiff's claim. Prudential continues to indicate that they may not agree that said coverage is available due to the fact that Plaintiff was driving a commercial vehicle. If the underinsurance carrier makes a final determination denying coverage, Plaintiff may be required to initiate legal action. We seek the guidance of this Court as to how to handle the potential of concurrent litigation of these matters and how that may effect the scheduling timetables noted above.

None at this time.

MAR-15-2002 02:18PM

FROM-IRWIN, MCKNIGHT & HUGHES LAW OFFICES

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T-456 P.002/002

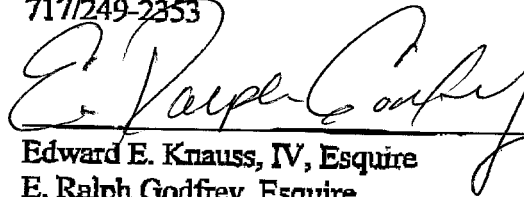
F-731

11.0 Identification of Lead Counsel

Identify by name, address, and telephone number lead counsel for each party.

Dated: 3/15/02

Marcus A. McKnight, III, Esquire
Mark D. Schwartz, Esquire
IRWIN, McKNIGHT & HUGHES
60 West Pomfret Street
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717/249-2353

Dated: 3/15/02

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